



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2004

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2004-0870

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195643.

The Texas Department of Transportation (the "department") received a request for any and all appraisal reports related to a specific piece of property. You claim that the information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

It is well established that statutes governing access to a specific subset of information held by a governmental body prevail over the generally applicable provisions of the Public Information Act (the "Act"). *See, e.g.,* Open Records Decision No. 478 at 2-3 (1987) (Act does not govern special rights of access granted under other statutes). Section 21.0111 of the Property Code provides in part:

- (a) A governmental entity with eminent domain authority that wants to acquire real property for a public use shall disclose to the property owner at the time an offer to purchase is made any and all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer.

Prop. Code § 21.0111(a). This statute expressly requires a governmental body with eminent domain authority, at the time it makes an offer to purchase property, to furnish “any and all existing appraisal reports” to the property owner. When a property owner requests an appraisal report under these circumstances, the requirements of section 21.0111 prevail over the more general provisions of the Act.

In this case, pursuant to the department’s eminent domain authority, the department has made an offer to purchase a specified piece of property from the requestor’s client, the property owner. Upon review, we find that the submitted appraisal reports were acquired or produced by the department during the appraisal process. Therefore, the submitted information under this fact situation must be released to the property owner as mandated by section 21.0111 of the Property Code.¹ As we are able to make this determination, we do not reach your claims under sections 552.105 and 552.111 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free,

¹ As the requestor in this case is the attorney representing the property owner, the submitted information may be released to the requestor. We note that should the department receive another request for this information from a person who is not the owner of the property in question, the department should resubmit this same information and request another decision.

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 195643

Enc. Submitted documents

c: Mr. George Chapman
Thompson & Knight, L.L.P.
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201-4693
(w/o enclosures)

Mr. Richard Rogers
Rogers & Wright, P.C.
1341 West Mockingbird Lane, Suite 950W
Dallas, Texas 75247-6907
(w/o enclosures)